A

SAW SIEW TUAN

v.

OMICRAST MANUFACTURERS SDN BHD

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COURT OF APPEAL, PUTRAJAYA
RAMLY ALI JCA
AZIAH ALI JCA
MAH WENG KWAI JCA
[CIVIL APPEAL NO: R-02-1605-2011]

C

5 JULY 2013

CONTRACT: *Sale and purchase agreement - Specific performance - Appeal against - Essential ingredient of SPA was for appellant to obtain approval from State Authority to alienate property - Whether alienation*

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of state land shall only take effect upon registration of registered document of title - National Land Code, s. 78(3) - Whether appellant had interest or title in property at time of execution of SPA - Whether there was valid contract between parties -Whether SPA capable of specific performance - Whether SPA void for uncertainty - Contracts Act 1950,

E

s. 30

LAND LAW: *Sale and purchase of property - Sale and purchase agreement - Specific performance - Appeal against - Essential ingredient of SPA was for appellant to obtain approval from State Authority to*

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alienate property - Whether alienation of state land shall only take effect upon registration of registered document of title - National Land Code, s. 78(3) - Whether appellant had interest or title in property at time of execution of SPA - Whether there was valid contract between parties - Whether SPA capable of specific performance - Whether SPA void for uncertainty - Contracts Act 1950, s. 30

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The appellant's deceased husband, who passed away on 2 November 1990, was the holder of a lease of land ('the property') which had expired on 20 May 1982. On 15 November 1995, the appellant and the respondent executed a sale and purchase

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agreement ('SPA') whereby the appellant as vendor agreed to sell the property to the respondent. Subsequent to the SPA, the appellant applied for a lease of the property and a new lease for 99 years was issued to the appellant. Subsequently, the respondent contended that the appellant had refused to take steps

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to apply to the state authority for consent to transfer the land to

the respondent within three months from the date of receipt of the document of title. The respondent instituted an action against the appellant at the High Court for specific performance of the SPA, which was allowed. The appellant appealed against the said decision, and submitted that since the SPA was uncertain in its terms, it was thus void for uncertainty and hence, the SPA was not capable of specific performance. Further, as at the date of the decision, the State Authority had yet to register the appellant as a leaseholder.

Held (allowing the appeal; setting aside decision of High Court)
Per Aziah Ali JCA delivering the judgment of the court:

(1) At the time of execution of the SPA, the appellant had no good title to the property as the lease had expired on 20 May 1982, approximately 13 years earlier. Though the appellant may have had the intention to sell the property to the respondent, at the material time she had no interest or title in the property which she could covenant to convey to the respondent. (para 6)

(2) Alienation of state land shall take effect upon the registration of a register document of title (s. 78(3) of the National Land Code ('NLC')) and notwithstanding that its alienation had been approved by the State Authority, the land shall remain state land until that time and there can be no intervention by equity in the face of the specific legislative provisions of the NLC (*Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case*, refd). (para 7)

(3) The fact that the appellant's deceased husband was the previous leaseholder of the property or that she was in possession of the property would not have conferred upon her any indirect interest in the property. The appellant could not have acquired any legitimate expectation that she would obtain title to the property in whatever form. (para 7)

(4) It was provided by cl. 3 of the preamble to the SPA that the sale of the property was subject to the approval from the relevant authorities being obtained. Thus, the completion of the contract between the appellant and the respondent was predicated on the occurrence of certain events. Taking into consideration (i) that the appellant had no good title to the

property; (ii) that the SPA did not provide for any time period for the appellant to obtain approval for alienation of the property in her favour; and (iii) that there was no certainty that the State Authority would approve the appellant's application (*North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor*), the completion of the sale and purchase transaction was thus uncertain and the SPA was void for uncertainty (s. 30 Contracts Act 1950). (para 8)

Bahasa Malaysia *Translation Of Headnotes*

Suami perayu, yang telah meninggal dunia pada 2 November 1990, adalah pemegang pajakan tanah ('tanah itu') yang telah tamat pada 20 Mei 1982. Pada 15 November 1995, perayu dan responden telah memeterai perjanjian jual beli ('PJB') di mana perayu sebagai penjual telah bersetuju untuk menjual tanah itu kepada responden. Selepas pemeteraian PJB, perayu telah memohon untuk pajakan tanah itu dan satu pajakan baru bagi 99 tahun telah dikeluarkan kepada perayu. Seterusnya, responden telah berhujah bahawa perayu enggan mengambil langkah-langkah untuk memohon kepada pihak berkuasa negeri untuk mendapatkan kebenaran memindah milik tanah itu kepada responden dalam tempoh tiga bulan dari tarikh penerimaan dokumen hak milik. Responden telah memulakan satu tindakan terhadap perayu di Mahkamah Tinggi untuk perlaksanaan spesifik PJB, yang telah dibenarkan. Perayu merayu terhadap keputusan tersebut, dan berhujah bahawa oleh kerana PJB tidak tetap dalam terma-termanya, ia adalah tak sah kerana tiada kepastian dan dengan itu, PJB tidak layak untuk perlaksanaan spesifik. Tambahan pula, pada tarikh keputusan dibuat, Pihak Berkuasa Negeri masih belum mendaftar perayu sebagai pemegang pajak.

Diputuskan (membenarkan rayuan; mengenepikan keputusan Mahkamah Tinggi)
Oleh Aziah Ali HMR menyampaikan penghakiman mahkamah:

(1) Pada masa pemeteraian PJB, perayu tidak mempunyai hak milik ke atas tanah tersebut kerana pajakan telah tamat pada 20 Mei 1982, iaitu 13 tahun sebelum itu. Walaupun perayu mungkin mempunyai niat untuk menjual tanah itu kepada responden, pada waktu material, beliau tidak mempunyai kepentingan atau hak milik ke atas tanah itu yang beliau boleh serahkan kepada responden melalui perjanjian.

(2) Pemberi milikan tanah kerajaan hanya akan berkuatkuasa selepas pendaftaran satu dokumen hak milik berdaftar (s. 78(3) Kanun Tanah Negara ('KTN')) dan tidak kira sama ada pemberi milikannya telah diluluskan oleh Pihak Berkuasa Negeri, tanah akan kekal sabagai tanah kerajaan sehingga masa itu dan tiada campur tangan boleh berlaku melalui ekuiti bertentangan dengan peruntukan perundangan khusus KTN *(Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case,* dirujuk).

(3) Fakta bahawa suami perayu yang sudah meninggal dunia adalah pemegang pajak yang terdahulu atas tanah itu atau bahawa tanah itu berada dalam milikan perayu tidak akan memberikannya apa-apa kepentingan ke atas tanah itu. Perayu tidak mungkin memperolehi mana-mana harapan sah bahawa beliau akan mendapatkan hak milik ke atas tanah itu dalam apa jua cara pun.

(4) Ia telah diperuntukkan oleh kl. 3 mukadimah PJB bahawa penjualan tanah adalah tertakluk kepada kelulusan daripada beberapa pihak yang relevan yang perlu diperolehi. Oleh itu, penyelesaian kontrak di antara perayu dan responden adalah berdasarkan berlakunya beberapa peristiwa tertentu. Dengan mengambilkira bahawa (i) perayu tidak mempunyai hak milik ke atas tanah itu; (ii) bahawa PJB tidak menyediakan tempoh masa bagi perayu memperolehi kelulusan untuk pemberi milikan tanah kepada pihaknya, dan (iii) bahawa tiada kepastian Pihak Berkuasa Negeri akan meluluskan permohonan perayu (*North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor*), penyelesaian transaksi jual beli adalah tidak menentu dan PJB adalah tidak sah kerana tiada kepastian (s. 30 Akta Kontrak 1950).

Case(s) referred to:

Aberfoyle Plantations Ltd v. Khaw Bian Cheng [1959] 1 LNS 3 PC ***(refd)***

Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 FC ***(refd)***

North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor [2011] 2 CLJ 392 CA ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 30

National Land Code, s. 78(3)

A *For the appellant - Amit Singh Penesar; M/s Teja Singh Penesar & Co*
For the respondent - Lye Wing Voi (Yae Khoon Chin & Yap Lay Hoon with her); M/s Cheah Teh & Su

[Appeal from High Court, Kangar; Civil Suit No: 22-04-2009]

B *Reported by Suhainah Wahiduddin*

JUDGMENT

C **Aziah Ali JCA:**

Background Facts

[1] The appellant's deceased husband was the holder of a lease of land known as LM No. 111 Lot 4306, Mukim Kurong Anai, Perlis ("the property"). The lease had expired on 20 May 1982. The appellant's husband passed away on 2 November 1990.

[2] On 15 November 1995 the appellant and the respondent executed a sale and purchase agreement ("SPA") whereby the appellant as vendor agreed to sell the property to the respondent. Subsequent to the SPA (exh. P5) the respondent had assisted the appellant to apply for a lease of the property. The application was successful and a new lease for 99 years commencing 17 November 2004 was issued to the appellant. The respondent contended that the appellant had refused to take steps to apply to the state authority for consent to transfer the land to the respondent within three months from the date of receipt of the document of title and receipt of the necessary approval for transfer of the property in favour of the respondent whereupon the respondent instituted the action against the appellant at the High Court for specific performance of the SPA. The appellant contended that the agreement was void and counter-claimed for losses allegedly incurred due to damage to trees on the property caused by the respondent.

The Decision Of The High Court

[3] It was not disputed that at the time the SPA was executed the appellant had no title to the property. In her evidence before the High Court the appellant agreed that she had intended to sell the property to the respondent. The learned Judicial Commissioner found that there was a valid contract between the parties and that

at the material time the parties were aware that the appellant had no right over the property. The learned Judicial Commissioner found no evidence that the State Authority had taken back the property. His Lordship found that by virtue of the appellant's deceased husband being the previous leaseholder therefore the appellant had an indirect interest in the property. On 11 May 2011 the High Court allowed the respondent's claim for specific performance and dismissed the appellant's counter-claim. As at the date of the decision the State Authority had yet to register the appellant as leaseholder.

[4] The appellant appealed to this court against the decision of the High Court. We allowed the appeal with costs of RM10,000. The decision of the High Court was set aside. The deposit was ordered to be refunded to the appellant.

The Appeal

[5] Before us the only issue for our determination was whether the SPA was void for uncertainty. Learned counsel for the appellant submitted that the essential ingredient of the SPA was for the appellant to obtain approval from the State Authority to alienate and/or lease the property in favour of the appellant. The SPA did not provide for any specific time frame for performance of the said obligation. It was submitted that since the SPA was uncertain in its terms it was thus void for uncertainty (s. 30 Contracts Act 1950). Hence the SPA was not capable of specific performance. It was further submitted that since alienation/lease of the property to the appellant was a fundamental term of the SPA, failure to obtain such lease resulted in the appellant not acquiring any interest in the property and the entire SPA would be devoid of purpose. For the respondent it was submitted that the learned Judicial Commissioner was correct in his finding that the appellant had an indirect interest in the property. Further it was submitted that the appellant was also in possession of the property at all times.

[6] On the evidence we agreed with counsel for the appellant that at the time of execution of the SPA the appellant had no good title to the property as the lease had expired on 20 May 1982, approximately 13 years earlier. On this issue we find the judgment of the Privy Council in the case of *Aberfoyle Plantations Ltd v. Khaw Bian Cheng* [1959] 1 LNS 3 instructive. In that case as a result of an amalgamation the defendant/appellant had succeeded Harewood Rubber Estates Ltd's interests in 1951,

under which the defendant/appellant acquired all the assets of Harewood Rubber Estates Ltd in exchange for shares. By an agreement dated 8 November 1955 the defendant/appellant as vendor entered into a conditional agreement with the plaintiff/respondent for the sale of a rubber estate in the State of Perak known as the Harewood Estate comprising a total area of some 1,336 acres. This area was made up of (a) some 1,154 acres held by the vendor's predecessor in title Harewood Rubber Estates Ltd as registered proprietor under certificates of title or grants from the Ruler of Perak, and (b) some 182 acres comprised in seven leases from the Ruler to Harewood Rubber Estates Ltd. The leases had in fact expired on 19 June 1950. Lord Jenkins in delivering the judgment said *inter alia* as follows:

> Clause 1 of the agreement provides that "subject to the condition contained in cl. 4 the vendor will sell and the purchaser will buy" the property known as the Harewood Estate as described in the Schedule to the agreement, which description includes the land comprised in the seven expired leases. The vendor as beneficial owner of the 1,154 odd acres could readily procure the transfer of the legal title to the purchaser. The vendor as between itself and Harewood Rubber Estates Ltd would be entitled to the benefit of any renewals of the seven leases comprising the 182 odd acres if and when granted. Harewood Rubber Estates Ltd, or the vendor, had remained in permissive occupation of the land comprised in the expired leases when the agreement of 8 November 1955 was entered into. The position thus was that at the date of the agreement the vendor had a good title to the 1,154 odd acres, but that its title to the 182 odd acres depended on the success of its negotiations for the grant of new leases.

Insofar as the 182 acres comprised in seven leases the Privy Council said as follows:

> … unless and until new leases were granted the vendor had no assignable interest in the 182 odd acres

Similarly in the present appeal we find that though the appellant may have had the intention to sell the property to the respondent, at the material time she had no interest or title in the property which she could covenant to convey to the respondent.

[7] Alienation of state land shall take effect upon the registration of a register document of title (s. 78(3) of the NLC) and notwithstanding that its alienation has been approved by the State Authority, the land shall remain state land until that time and there can be no intervention by equity in the face of the specific

legislative provisions of the NLC (see *Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144; FC). In the case of *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor* [2011] 2 CLJ 392 this court had occasion to state *inter alia* as follows:

> Section 48 of the Code makes it clear that no title to State Land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. It is immaterial whether the appellant had prematurely entered into possession of the land and claimed to have planted some 693.408 hectares of the land originally approved in principle for alienation with oil palm

Therefore the fact that the appellant's deceased husband was the previous leaseholder of the property or that she was in possession of the property would not have conferred upon her any indirect interest in the property. The appellant could not have acquired any legitimate expectation that she would obtain title to the property in whatever form.

[8] It was provided by cl. 3 of the preamble to the SPA that the sale of the property was subject to the approval from the relevant authorities being obtained. The SPA provided further that the balance purchase price was to be paid to the appellant's stakeholders within two months "from the date of receipt by the vendor of the document of title in respect of the said property and the necessary approval for transfer (if any) in favour of the purchaser whichever is later". Thus completion of the contract between the appellant and the respondent was predicated on the occurrence of certain events. Taking into consideration the fact that at the material time the appellant had no good title to the property and the fact that the SPA did not provide for any time period for the appellant to obtain approval for alienation of the property in her favour, and considering the fact that there was no certainty that the State Authority would approve the appellant's application (*North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor*, *supra*), we agreed with learned counsel for the appellant that the completion of the sale and purchase transaction was uncertain and therefore the SPA was void for uncertainty (s. 30 Contracts Act 1950). For the reasons stated we allowed the appeal and set aside the decision of the High Court.